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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LINDBERGH AND SHINE LLC, a Delaware
limited liability company,

Plaintiff,

v.

PWT GROUP A/S, a Denmark entity; OLE
KOCH, an individual; and ASOS.COM
LIMITED, a United Kingdom entity,

Defendants.

Case No.: 2:17-cv-3082-APG-PAL

**PLAINTIFF'S RESPONSE TO NOTICE
REGARDING INTENTION TO DISMISS
(ECF NO. 8)**

Plaintiff Lindbergh and Shine LLC ("Plaintiff"), by and through its counsel of record, Gibson Lowry LLP, herein responds to this Court's notice regarding intention to dismiss (the "Notice"; ECF No. 8).

This response is based on the Memorandum of Points and Authorities incorporated herein, on the pleadings and papers already of record in this matter, on oral argument of counsel to be adduced at this Court's hearing, if any, and on any other matter of which this Court wishes to take notice.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL BASIS

The ninety-day time limit for service established by Fed. R. Civ. P. 4(m) does not, by its terms, apply to Defendants, who are all located in either Denmark or the United Kingdom. Fed. R. Civ. P. 4(m) expressly “does not apply to service in a foreign country under Rule 4(f)...” Fed. R. Civ. P. 4(f) applies to service of individuals, and, by cross-reference from Fed. R. Civ. P. 4(h)(2), entities who are to be served “at a place not within any judicial district of the United States.” *Lucas v. Natoli*, 936 F.2d 432 (9th Cir. 1991), makes clear that former Fed. R. Civ. P. 4(j) (now 4(m)) simply made the then-120-day, now-90-day service requirement “inapplicable to service in a foreign country.” *Ibid*.

II. FACTS

Plaintiff filed the Complaint in this matter on December 19, 2017. ECF No. 1. Defendants PWT Group A/S and Ole Koch (“Mr. Koch”) are citizens of Denmark—respectively, an entity that is to be served “at a place not within any judicial district of the United States” as contemplated by Fed. R. Civ. P. 4(h)(2), and an individual. *Id.* at ¶ 3-4. Defendant ASOS.com Limited is a citizen of England and an entity that is to be served “at a place not within any judicial district of the United States.” *Id.* at ¶ 5.

III. STATUS OF SERVICE

Plaintiff remains in the process of effectuating service pursuant to the Hague Convention on Defendants, who are citizens of other countries. The Hague Convention requires submission by mail of the Summons and Complaint—which, in the case of PWT Group A/S and Mr. Koch, required translation into Danish—to the central authorities of England and Denmark, following which those countries’ court apparatuses will effectuate service. Upon receipt of returns of service from those overseas central authorities, Plaintiff will promptly file same. If ordered by this Court, Plaintiff will provide status reports regarding such service overseas.

IV. CONCLUSION

For the reasons set forth herein, Plaintiff respectfully requests that this Court allow

1 Plaintiff's claims to remain open under the authority of Fed. R. Civ. P. 4(m). Plaintiff will
2 provide status reports to this Court as directed.

3 Respectfully submitted this 28th day of March, 2018.

4 GIBSON LOWRY LLP

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6 By /s/ J.D. Lowry.
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